

REMARKS

This is a full and timely response to the outstanding final Office Action mailed April 18, 2005 (Paper No. 15). Upon entry of this response, claims 1-41 are pending in the application. In this response, claims 1, 11, 12, 22, 23, 33, 34, and 36-41 have been amended. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. **Rejection of Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32, and 34-41 under 35 U.S.C. §102**

Claims 1, 12, 23, and 34 have been rejected under §102(b) as allegedly anticipated by *Engel et al.* (U.S. 6,320,585). Applicant respectfully submits that this rejection has been overcome by claim amendments made herein. A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

a. **Claims 1, 12, 23, and 34**

Applicant respectfully submits that *Engel et al.* does not disclose, teach, or suggest the feature of a “means for presenting and displaying each of said plurality of performance parameters in association with the corresponding summary period” as recited in amended claim 1. Furthermore, *Engel et al.* does not disclose, teach, or suggest the feature of “a data presentation module, wherein said module presents each of said plurality of processed performance parameters in association with the corresponding summary period” as recited in amended claim 12. Finally, *Engel et al.* does not disclose, teach, or suggest the feature of “presenting each of said plurality of processed performance parameters in association with the corresponding summary period” as recited in amended claims 23 and 34.

1) Discussion of *Engel et al.* Reference

Engel et al. discloses a method of collecting and displaying collected network performance information and predicted network performance information. Network performance data for multiple LAN segments is first collected for a relatively long baseline period, of the order of 3-6 weeks. “It is important to select a baseline period that is sufficiently long to assure so that the prediction that will be performed is meaningful.” (Col. 9, line 6-8.) The sampling of network data occurs at a regular polling interval, for example 15 minutes. (Col. 5, lines 60-65.)

Engel et al. discloses that a bandwidth utilization report can be generated. This bandwidth utilization report, shown in FIG. 2, shows bandwidth utilization for multiple LAN segments over a “relevant period of time.” (Col. 6, lines 20-55; Col. 7, lines 8-55.) The period of time described in *Engel et al.* is a day. It is clear from a reading of the entire *Engel et al.* reference that this time period displayed in the stacked bar chart of FIG. 2 is not equivalent to the baseline period over which data is collected. Thus, *Engel et al.* discloses two different time periods: a relatively long baseline period during which data is collected; and a shorter reporting period for which performance data is displayed.

FIG. 2 of *Engel et al.* shows the bandwidth utilization report as a stacked bar chart. The chart shows how bandwidth utilization, expressed as a percentage of maximum, varies throughout the “relevant period of time.” This chart shows the following data for LAN segment 1: for about 65% of the “relevant period of time,” the segment was less than 10% utilized; and for about 30% of the “relevant period of time,” the segment was 10-20% utilized.

2) Discussion of Claims 1, 12, 23, and 34

Claims 1, 12, 23, and 34 recite two different types of time periods: “a report period, said report period corresponding to a reporting period of interest”; and “a plurality of summary

periods, each summary period corresponding to a different portion of said reporting period.”

Thus, each of the summary periods is contained within the reporting period.

These claims have been amended to recite “presenting each of said plurality of performance parameters *in association with* the corresponding summary period.” Other claim language specifies that these performance parameters correspond to “actual performance of said communication device during each of said summary periods.”

Thus, it is clear from the plain meaning of the claim language that each performance parameter is displayed or presented in association with its corresponding summary period, where each summary period is contained within the reporting period.

3) The Office Action alleges that FIG. 2 of *Engel et al.* discloses a “means for presenting and displaying each of said plurality of performance parameters in association with the corresponding summary period”

The Office Action (p. 3) alleges that several portions of *Engel et al.* disclose a “presenting” or “displaying” feature. Specifically, the Office Action alleges that the display feature is disclosed in FIG. 2 of *Engel et al.* as well as several text passages in *Engel et al.* Applicant notes that all of the cited passages describe the stacked bar chart of FIG. 2. Thus, the Office Action alleges that the stacked bar chart corresponds to the “means for presenting and displaying.”

Using the reasoning explained in the Office Action, the claimed “performance parameters” would correspond to bandwidth utilization in FIG. 2. The stacked bar chart illustrates how bandwidth utilization for multiple LAN segments is distributed throughout what *Engel et al.* refers to as a “relevant period of time.” In the particular example of FIG. 2, the period is a single day.

4) *Engel et al.* FIG. 2 does not disclose a “means for presenting and displaying each of said plurality of performance parameters in association with the corresponding summary period”

Following the reasoning used in the Office Action, in order to disclose the claimed feature “displaying each of said plurality of performance parameters in association with the corresponding summary period,” the chart in *Engel et al.* must show utilization for each summary period within the “relevant period of time,” which is a day in FIG. 2. Importantly, however, this chart does not display utilization for time periods within the day. That is, the chart does not show utilization between 10-11 AM, 11-12 AM, etc.

What the chart shows, instead, is that LAN segment 1 was less than 10% utilized for about 65% of the day, and 10-20% utilized the for about 30% of the day. The chart does not show for which particular portion of the day the segment was 10% utilized, and so is not equivalent to a display of the utilization performance parameter for a particular summary period in association the corresponding report period.

5) *Engel et al.* does not disclose a “means for specifying a plurality of summary periods”

Applicant can find no specific teaching in *Engel et al.* of how a user specifies a report period or a plurality of summary periods to be used in generating the stacked bar chart. The Office Action alleges that this feature is taught by Col. 2, lines 32-39 of *Engel et al.*, which is a reference to a “preselected period” for which bandwidth utilization is displayed.

Applicants will assume, *arguendo*, that the term “preselected period” suggests that a user *specifies* a time period for bandwidth utilization display, for example, a particular day. However, this would correspond to a single report period, not to multiple summary periods. *Engel et al.* does not disclose, teach, or suggest that a user specifies multiple summary periods within the report period displayed in the stacked bar chart.

Even if the polling period in *Engel et al.* corresponds to a summary period, and even if *Engel et al.* suggests that the polling period can be specified by the user, this would correspond to a user specifying a single summary period within the one-day report period. There is no reason in *Engel et al.* for the user to specify multiple summary periods, since the stacked bar chart does not differentiate between different intra-day periods.

6) Conclusion

For at least the reasons discussed above, *Engel et al.* does not disclose, teach, or suggest the feature of “displaying each of said plurality of performance parameters in association with the corresponding summary period”. Therefore, *Engel et al.* does not anticipate the amended claims 1, 12, 23, and 34. Thus, the amended claims overcome the rejection, and the rejection should be withdrawn.

b. Claims 36, 37, 38, 39, 40, and 41

Applicant respectfully submits that *Engel et al.* does not disclose, teach, or suggest the feature of “recommending a performance configuration for the communication device based upon said plurality of trend parameters” as recited in amended claims 36, 37, 38, 39, 40, and 41. *Engel et al.* discloses using the collected performance data to compute of a “days-to-threshold” value, which is a predicted future time when bandwidth utilization for a particular LAN segment will reach a specific value. However, this prediction is not a recommendation, and the predicted value is not a “performance configuration for the communication device.” Therefore, *Engel et al.* does not anticipate amended claims 36, 37, 38, 39, 40, and 41. Thus, the amended claims overcome the rejection, and the rejection should be withdrawn.

c. Claims 2, 8-10, 12, 19-21, 24, 30-32, and 35

Since claims 1, 12, 23, and 34 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 2, 8-10, 12, 19-21, 24, 30-32, and 35 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2, 8-10, 12, 19-21, 24, 30-32, and 35 be withdrawn.

2. Rejection of Claims 3, 14, and 25 under 35 U.S.C. §103

Claims 3, 14, and 25 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *VanDevort* (U.S 5,699,346). Applicant respectfully traverses this rejection. Since claims 1, 12, 23, and 34 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 3, 14, and 25 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 3, 14, and 25 be withdrawn.

3. Rejection of Claims 4-7, 15-18, and 26-29 under 35 U.S.C. §103

Claims 3, 14, and 25 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *VanDevort* (U.S 5,699,346) and further in view of *Grevious* (U.S. 6,167,310). Applicant respectfully traverses this rejection. Since claims 1, 12, 23, and 34 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 4-7, 15-18, and 26-29 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 4-7, 15-18, and 26-29 be withdrawn.

4. Rejection of Claims 11, 12, and 33 under 35 U.S.C. §103

Claims 11, 12, and 33 have been rejected under §103(a) as allegedly obvious over *Engel et al.* (U.S. 6,320,585) in view of *Colmant et al.* (U.S. 6,144,662). Applicant respectfully traverses this rejection. Since claims 1, 12, 23, and 34 are allowable for at least the reasons discussed above, Applicant respectfully submits that claims 11, 12, and 33 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 11, 12, and 33 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-41 be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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